

A "retailer maintaining a place of business in Illinois" as described in 86 Ill. Adm. Code 150.201(i), is required to register with the State as an Illinois Use Tax collector. See 86 Ill. Adm. Code 150.801 (This is a GIL.)

February 5, 1999

Dear Ms. Xxxxx:

This letter is in response to your letter dated January 12, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

Enclosed is a copy of our completed application #NUC-1. I have completed the sections pertaining to employment at this time, sections 1, 4 and 7.

I am writing to you for assistance regarding section 2, Sales Tax and Reseller Registration. I spoke at length with the service department at the Illinois Department of Revenue. However, due to our circumstances it was unclear whether COMPANY is liable to collect sales tax from Illinois customers. I was informed to write to the legal department and request a ruling on the matter.

COMPANY is a children's book publishing company. All business activities are performed at our CITY/STATE office. Business activities include sales, inventory, purchases, records, marketing, accounting, customer service, warehousing and production. The owner of the business, PERSON has recently moved to Illinois with her husband due to his business transfer. PERSON is working in her home at this time for BUSINESS. She has completed a short outline of her duties and job performance to assist your ruling. Please refer to 'enclosure #1'.

It is unclear whether COMPANY is 'conducting business' in Illinois due to PERSON's physical presence and duties. I hope that you can assist in clearing this matter up so that we can properly register with the Illinois Department of Revenue.

If you have any questions or need to discuss the matter before your ruling, please contact PERSON2 at ##### Monday through Friday between 9:00 - 5:00. Thank you in advance for your assistance.

The following information is general in nature and we hope it is helpful in evaluating whether a company has nexus with Illinois.

An "Illinois Retailer" is one who either accepts purchase orders in the State of Illinois or maintains an inventory in Illinois and fills Illinois orders from that inventory. The Illinois Retailer is then liable for Retailers' Occupation Tax on gross receipts from sales and must collect the corresponding Use Tax incurred by the purchasers.

Another type of retailer is the retailer maintaining a place of business in Illinois. The definition of a "retailer maintaining a place of business in Illinois" is described in 86 Ill. Adm. Code 150.201(i), enclosed. This type of retailer is required to register with the State as an Illinois Use Tax collector. See 86 Ill. Adm. Code 150.801, enclosed. The retailer must collect and remit Use Tax to the State on behalf of the retailer's Illinois customers even though the retailer does not incur any Retailers' Occupation Tax liability.

The United States Supreme Court in Quill Corp. v. North Dakota, 112 S.Ct 1904 (1992), set forth the current guidelines for determining what nexus requirements must be met before a person is properly subject to a state's tax laws. The Supreme Court has set out a 2-prong test for nexus. The first prong is whether the Due Process Cause is satisfied. Due process will be satisfied if the person or entity purposely avails itself or himself of the benefits of an economic market in a forum state. Quill at 1910.

The second prong of the Supreme Court's nexus test requires that, if due process requirements have been satisfied, the person or entity must have physical presence in the forum state to satisfy the Commerce Clause. A physical presence is not limited to an office or other physical building. Under Illinois law, it also includes the presence of any agent or representative of the seller.

The final type of retailer is the out-of-State retailer that does not have sufficient nexus with Illinois to be required to submit to Illinois tax laws. A retailer in this situation does not incur Retailers' Occupation Tax on sales into Illinois and is not required to collect Use Tax on behalf of its Illinois customers. However, the retailer's Illinois customers will still incur Use Tax on the purchase of the out-of-State goods and have a duty to self-assess their Use Tax liability and remit the amount directly to the State. The Use Tax rate is 6.25%.

I hope this information is helpful. The Department of Revenue maintains a Web site which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.